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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Applications of WorldCom, Inc. and)
MCI Communications Corporation)
for Transfer of Control of MCI)
Communications Corporation to)
WorldCom, Inc.)

CC Docket No. 97-211

To: The Commission

REPLY TO JOINT OPPOSITION TO GTE SERVICE CORPORATION'S MOTION
TO DISMISS AND REQUEST FOR PLEADING CYCLE IN THE EVENT THAT
MOTION IS DENIED

BellSouth Corporation submits this reply to the Joint Opposition To GTE Service Corporation's Motion To Dismiss ("Joint Opposition To Motion To Dismiss") submitted by WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI"). The Motion to Dismiss of GTE Service Corporation ("Motion to Dismiss") was filed on January 5, 1998. That motion raised a substantial question as to whether the above-captioned Application's discussion of the affect WorldCom's proposed acquisition of MCI would have on the public interest was so deficient that it must be dismissed. The absence of substance in the WorldCom/MCI Application has led to its labeling as a "stealth application" by one commenter.¹ WorldCom/MCI's recently filed Joint Reply

¹ Comments in Support of GTE Service Corporation's Motion to Dismiss of Rainbow/PUSH Coalition at 1, CC Dkt. No. 97-211 (dated January 27, 1998).

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Of WorldCom, Inc. and MCI Communications Corporation to Petitions to Deny and Comments ("Joint Reply to Petition to Deny and Comments") seeks to insert substantial new factual information and arguments into the record after commenters filed on the original "stealth" application. There is no current provision for comment on WorldCom/MCI's Joint Reply to Petition to Deny and Comments. Should the Commission choose not to grant GTE's Motion to Dismiss, the Commission should provide for an additional pleading cycle so that the facts and arguments newly raised in WorldCom/MCI's reply can be addressed by the public. Endorsing WorldCom/MCI's "stealth application" approach would improperly pre-empt informed public comments, improperly shift the burden of proof to the public and leave the Commission with a record unsuitable for informed decision-making.

There has been general support for the substance of GTE's observation that the Application "fail[s] to provide the most basic information required ... to evaluate the public interest and competitive ramifications of this transaction."² BellSouth agrees that the application is a "stealth application." As GTE and others have pointed out, the application does not define markets, identify participants in the market or provide a factual basis for evaluating the effect of the proposed acquisition on the markets involved,

² Motion to Dismiss of GTE Service Corporation at 2, CC Dkt. No. 97-211 (dated January 5, 1998); Reply Comments of the Communications Workers of America at 3, CC Dkt. No. 97-211 (dated January 26, 1998); Response of the United States Internet Providers Association, CC Dkt. No. 97-211 (January 26, 1998) ("USIPA Response"); Response of Simply Internet, Inc. and Request for Additional Pleading Cycle at 3, CC Dkt. No. 97-211 (dated January 26, 1998) ("Simply Internet Response").

as the Commission has clearly requested applicants to do.³ WorldCom and MCI acknowledged that this standard applied to them in their Application.⁴ Yet, the application is egregiously lacking in supplying the information required. For example, the Application's public interest section contains not the slightest indication that WorldCom and MCI are the two largest providers of Internet backbone service, and that together they are likely to control over half the market.

WorldCom/MCI's response to the Motion to Dismiss is curious, all but admitting that the Application is deficient. WorldCom/MCI begin by arguing that "the Applications contain an extensive public interest showing as demonstrated by the Applicants' Joint Reply." Joint Opposition to Motion to Dismiss at 1, 10. This is, of course, nonsensical. The Application must demonstrate its own sufficiency, and the Joint Reply To Petition to Deny and Comments contains no discussion of why the Application is sufficient. Instead, it seeks to insert information into the record that should have been supplied earlier.⁵

³ MCI Communications Corp. and British Telecommunications plc, Memorandum Opinion and Order, GN Dkt. No. 96-245, FCC 97-302 (rel. September 24, 1997); Memorandum Opinion and Order, Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10 (rel. August 14, 1997) ("BA/NYNEX Order").

⁴ Applications of WorldCom, Inc. and Howard A. White, Trustee for Transfers of Control of MCI Communications Corporation and Request for Special Temporary Authority at 25, (dated October 1, 1997) ("Application").

⁵ WorldCom initially filed an application for transfers of control while its offer for MCI was considered "hostile." At this point, WorldCom may not have had broad access to MCI information. However, WorldCom's offer later became a "friendly" offer, and WorldCom made various editorial amendments to its earlier application to reflect this fact. However, WorldCom ignored that opportunity to update its application substantively to reflect its then-broader access to MCI information.

WorldCom/MCI next argue that because GTE was able to provide the Commission with a lengthy discussion of the likely effects of WorldCom's proposed acquisition of MCI, that the Application must have been sufficient. Joint Opposition To Motion To Dismiss at 2. BellSouth also submitted lengthy comments, but the fact that BellSouth, GTE and others invested substantial effort in gathering information that should have been presented in the Application is hardly basis for concluding that the Application was sufficient. The burden of proof is squarely on WorldCom and MCI here; they cannot transfer it to others through their "stealth application" approach.

WorldCom/MCI also now assert that the Commission's rules and precedents regarding the need for applications to identify markets and provide a factual discussion of competitive effects apply only to dominant carriers, although in their Application they acknowledged that there was only one set of requirements.⁶ Although they agree that the burden of proof rests on the applicant, whether non-dominant or not,⁷ they argue that "because [WorldCom and MCI] have no ability to exercise market power, no purpose would be served for them to provide extended analysis." Joint Opposition To Motion to Dismiss at 8. Of course, Commission rules and precedents draw no such distinction,⁸ and, even if they did, they could not rest on bald assertions by the applicants that they could not exercise market power post-acquisition. In fact, commenters have presented substantial evidence that the combination of WorldCom and MCI will allow them to

⁶ Application at 25.

⁷ Joint Opposition to Motion to Dismiss at 4.

⁸ BA/NYNEX Order at ¶ 49, 50.

exercise market power, especially in the Internet market where their combination is generally viewed as creating a dominant firm, and result in a less competitive residential long distance market by making collusion substantially easier. Given the widely-held public concerns about WorldCom's proposed acquisition of MCI, their protestations that a complete Application would serve no purpose are difficult to credit.

Finally, in a last ditch effort, WorldCom/MCI assert that their Application is sufficient because "the Commission is not a *tabula rasa*." Joint Opposition To Motion to Dismiss at 9. That is, because the Commission knows a lot about telecommunications, it can simply fill in the blanks in the Application. This is not how the process works. The applicants must set out the information they rely on in their Application, for the Commission and for the public. Otherwise, there would be no meaningful opportunity for public comment.

BellSouth thus requests that, in the event the Commission does not grant GTE's Motion to Dismiss, that it set a comment cycle allowing public comment on WorldCom/MCI's Joint Reply to Petition to Deny and Comments.⁹ See USIPA Response at 4 (Association "urges the Commission to open an additional full public comment cycle

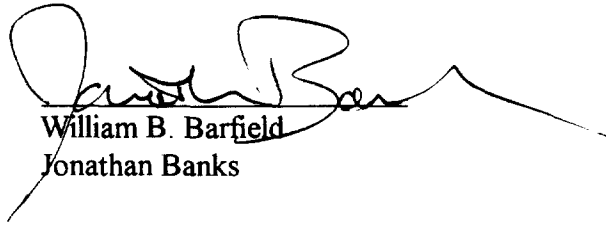
⁹ Thus, the Commission could treat WorldCom/MCI's Reply as the major amendment to the Application that it is. In this case, the Commission would normally issue a public notice seeking comment on the amendment.

in this proceeding"); Simply Internet Response at 4. BellSouth believes that twenty days should be provided from the issuance of public notice for the submission of comments.

Respectfully submitted,

BELLSOUTH CORPORATION

By:

A handwritten signature in black ink, appearing to read "Jonathan Banks", is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William B. Barfield
Jonathan Banks

Its Attorneys

Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3910
(404) 249-2207
(404) 249-5901 (facsimile)

Dated: February 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of February, 1998 served the following parties to this action with a copy of the foregoing **REPLY TO GTE MOTION TO DISMISS WORLDCOM/MCI APPLICATION AND REQUEST FOR PLEADING CYCLE** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties at the addresses listed below:

Magalie Roman Salas (12 copies)
Secretary Federal Communications
Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 544
Washington, DC 20554

Catherine R. Sloan
Robert S. Koppel
WorldCom, Inc.
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Michael H. Salsbury
Mary L. Brown
Larry A. Blosser
MCI Communications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006-3606

Anthony C. Epstein
John B. Morris
Ian H. Gershengorn
Jenner & Block
601 Thirteenth Street, NW
Washington, DC 20005

Andrew D. Lipman
Jean L. Kiddoo
Helen E. Disenhaus
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, DC 20007

International Transcription Services, Inc.
1231 20th Street, NW
Washington, DC 20036

Richard E. Wiley
R. Michael Senkowski
Jeffrey S. Linder
Robert J. Butler
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Michelle Carey (2 copies + diskette)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 544
Washington, DC

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Beist
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, NW, Suite 1100
Washington, DC 20006

John Thorne
Sarah Deutsch
Robert H. Griffen
Attorneys for Bell Atlantic
1320 North Court House Road; 8th Floor
Arlington, VA 22201

George Kohl
Senior Executive Director
Research and Development
Communications Workers of America
501 Third Street, NW
Washington, DC 20001-2797

John J. Sweeney
President
American Federation of Labor and
Congress of Industrial Organizations
815 16th Street, NW
Washington, DC 20006

Janice Mathis
General Counsel
Rainbow/PUSH Coalition
Thurmond, Mathis & Patrick
1127 W. Hancock Avenue
Athens, GA 30603

David Honig
Special Counsel
Rainbow/PUSH Coalition
3636 16th Street, NW, B-366
Washington, DC 20010

Matthew R. Lee, Esq., Executive Director
Inner City Press/Community on the Move
& Inner City Public Interest Law Project
1919 Washington Avenue
Bronx, NY 10457

Andrew Jay Schwartzman
Gigi B. Sohn
Joseph S. Paykel
Media Access Project
Suite 400
1707 L Street, NW
Washington, DC 20036

Thomas A. Hart, Jr.
Amy E. Weissman
M. Tamber Christian
Attorneys for TMB Communications, Inc.
Ginsburg, Feldman and Bress Chartered
1250 Connecticut Avenue, NW
Washington, DC 20036

William P. Barr, Executive Vice President
& General Counsel
Ward W. Wueste, Vice President -
Deputy General Counsel
GTE Service Corporation
One Stamford Forum
Stamford, CT 06904

Sue Ashdown
Coalition of Utah Independent Internet
Service Providers
XMission
51 East 400 S. Suite 200
Salt Lake City, UT 84111

George Kohl
Debbie Goldman
Communications Workers of America
501 Third Street, NW
Washington, DC 20001

Alan Y. Naftalin
Gregory C. Staple
R. Edward Price
Attorneys for Telstra
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, NW
Washington, DC 20036

Barbara O. O'Connor, Chair
Donald Vial, Policy Committee Chair
Maureen Lewis, General Counsel
The Alliance for Public Technology
901 Fifteenth Street, NW, Suite 230
Washington, DC 20005

James Love
Director
Consumer Project on Technology
P. O. Box 19367
Washington, DC 20036


Nelle Williams